IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5733 of 2006

Date of Decision: 2.11.2006

Ram Gopal ...Petitioner

Vs.

Anil Kumar ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Sushil Bhardwaj, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order vide which application moved by the petitioner for the transfer of the case has been declined by the learned District Judge, Karnal.

Learned District Judge has noticed that earlier suit was filed on 19.6.2000 and is at the stage of rebuttal evidence and arguments whereas the second suit was filed on 6.1.2003 qua different suit property. The only similarity between the two cases was the question of Will. The learned District Judge has also noticed that an application has already been moved taking an objection under Order 2 Rule 2 of the Code of Civil Procedure claiming that the second suit is not maintainable in view of the suit already filed between the parties.

Be that as it may learned District Judge was right in holding

that the said decision can be used by the petitioner in the subsequent case. There is no question of conflicting judgments being rendered in the present case in view of the fact that earlier suit is at the stage of rebuttal evidence and arguments whereas the second suit has been instituted in 2003 and evidence has not yet started.

Learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in **Indian Overseas Bank, Madras Vs. Chemical Construction Co. and others AIR 1979 SC** 1514 to contend that once a common question of fact and law is raised in second suit and the parties are common then generally in the interest of justice the case should be transferred to one Court so as to be tried by the same court.

Learned counsel for the petitioner also placed reliance on the judgment of Hon'ble Supreme Court in **M/s Chitivalasa Jute Mills Vs. M/s Jaypee Rewa Cement JT 2004 (2) SC 535** to contend claiming that where two plaints were filed by two parties before two different courts, parties and cause of actions are substantially the same and the same set of evidence is required to prove the claims in one and defence in the another and the issues arising for decision would be substantially common then to avoid duplication of recording evidence and possibility of inconsistent findings and decisions by two courts, it is proper to transfer the case to one court.

I have gone through the said judgments. They do not apply to facts of the present case as already mentioned. There is hardly any possibility of conflicting judgments being given as one case is at the stage of rebuttal evidence whereas second case has yet to proceed. Learned District Judge was, therefore, right in coming to the conclusion that application has been moved just to delay the proceedings.

There is no error in exercise of jurisdiction. It was for the court to decide whether the case has to be transferred on given facts an circumstances which does not call for any interference by this Court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

2.11.2006
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